

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

REINALDO ARROYO ORTIZ

Petitioner

v.

ADMINISTRATOR FOR THE
COMMONWEALTH OF PUERTO
RICO CORRECTIONAL DEPT.

Respondent

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Civil No. 03-1503(SEC)

OPINION AND ORDER

Before the Court is Petitioner's motion for relief from judgment of conviction filed pursuant to 28 U.S.C. § 2254, seeking to set aside his state conviction and sentence for first degree murder, attempted murder, weapons' law violation, and simple assault imposed by the Superior Court of First Instance, Mayaguez Part (Docket # 1). After an initial review by U.S. Magistrate Judge Camille Vélez-Rivé and the Court, the matter was referred to Magistrate Judge Vélez-Rivé for an evidentiary hearing and a Report and Recommendation (Docket # 35). Magistrate Judge Vélez-Rivé held an evidentiary hearing on June 10, 2005 (Docket # 39). Subsequently, she issued her Report, recommending that Petitioner's motion be denied (Docket # 41). Petitioner has not filed any objections to the Magistrate's report and the time allotted for doing so has expired. Therefore, the Court will **APPROVE** and **ADOPT** the Magistrate's Report and Recommendation, **DENY** Petitioner's motion, and **DISMISS WITH PREJUDICE** the above captioned action.

Standard of Review

The scope of review of a Magistrate's recommendation is set forth in 28 U.S.C. § 636(b)(1)(c). This section provides that "[a] judge of the [district] court shall make a de novo determination of those portions of the report or specified findings or recommendations to which [an] objection is made." Id. The Court can "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate," however, if the affected party

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fails to timely file objections, “the district court can assume that they have agreed to the magistrate’s recommendation.” Alamo-Rodríguez v. Pfizer Pharm., Inc., 286 F. Supp. 2d 144, 146 (D.P.R. 2003) (quoting Templeman v. Chris Craft Corp., 770 F.2d 245, 247 (1st Cir. 1985)). Thus, no review is required of those issues to which objections are not timely raised. Thomas v. Arn, 474 U.S. 140 (1985), reh’g denied, 474 U.S. 1111 (1986); Borden v. Sec’y of Health & Human Servs., 836 F.2d 4, 6 (1st Cir. 1987). In fact, a party who fails to file any objections to the Magistrate Judge’s Report and Recommendation within ten days of its filing waives his or her right to appeal from the district court’s order. Henley Drilling Co. v. McGee, 36 F.3d 143, 150-51 (1st Cir. 1994); United States v. Valencia-Copete, 792 F.2d 4, 5 (1st Cir. 1986); Davet v. Maccarone, 973 F.2d 22, 30-31 (1st Cir. 1992) (“[f]ailure to raise objections to the Report and Recommendation waives that party’s right to review in the district court and those claims not preserved by such objection are precluded on appeal”).

Analysis and Conclusion

Neither party has objected to the Magistrate Judge’s Report and Recommendation, thus we are not required by law to review it. However, upon review, we find no fault with Magistrate Judge Vélez-Rivé’s assessment and thus **APPROVE** and **ADOPT** her Report and Recommendation as our own. Consequently, Petitioner’s motion is **DENIED** and the above captioned action will be **DISMISSED WITH PREJUDICE**. Judgment shall be entered accordingly.

SO ORDERED.

In San Juan, Puerto Rico, this 26th day of July, 2005.

S/ *Salvador E. Casellas*

SALVADOR E. CASELLAS
United States District Judge